

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD

May 2, 2008

Department of Environmental Quality, DEQ Building #2

Conference Room 101

168 N 1950 W

Salt Lake City, Utah 84114-4850

BOARD MEMBERS PRESENT

Kent J. Bradford, P.G., Chair
Stephen T. Nelson, Ph.D., Vice Chair
Richard W. Sprott, DEQ Director
Dane L. Finerfrock, Executive Secretary
Patrick D. Cone
Frank D. DeRosso, MSPH, C.I.H.
Christian K. Gardner
Elizabeth Goryunova, M.S.
Peter A. Jenkins, M.S., CHP
Joseph K. Miner, M.D., MSPH
Gregory G. Oman, D.D.S., B.S.
John W. Thomson, M.D.

BOARD MEMBERS ABSENT/EXCUSED

Scott Bird
Joette E. Langianese, Commissioner

DRC STAFF/OTHER DEQ MEMBERS PRESENT

Edith Barker, DRC Staff
John Hultquist, Section Manager
Craig Jones, Section Manager
Laura Lockhart, Attorney General's Office
Yoli Necochea, DRC Staff
Fred Nelson, Attorney General's Office
Raymond Nelson, DRC Staff
Loren Morton, Section Manager
Bill Sinclair, DEQ Deputy Director
Donna Spangler, DEQ OPP

PUBLIC

Janice Archuleta, Gault Group
Robert Baird, URS Corporation
Mike Collins, Bluerock Resources
Andrew Drom, Cavanagh Services Group, Inc.
Judy Fahys, Salt Lake Tribune
Craig Galli, Attorney for Holland & Hart, Representing EnergySolutions
Steve Glass, BlueRock Resources
Paul Gray, BlueRock Resources
Randy Horiuchi, Salt Lake County
Gregory Hunt, Mancos Resources
Charles Judd, Cedar Mountain Environmental, Inc.
Karmen King, Gault Group
Stephen Landau, Denison Mines
Mark LeDoux, EnergySolutions
Romaine Marshall, EnergySolutions
James O'Neal, Citizen
Susan Rice, Cavanagh Services Group, Inc.
Tye Rogers, EnergySolutions
Daniel Shrum, EnergySolutions
Jim Sweet, Gamma West Brachytherapy

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in the Department of Environmental Quality (DEQ), Conference Room 101, 168 North 1950 West, DEQ Bldg. 2, Salt Lake City, Utah. Kent J. Bradford, Chair, called the meeting to order at 2:00 p.m. He welcomed the Board Members and the public. Chairman Bradford indicated that if the public wished to address any items on the agenda, they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of the Minutes for April 4, 2008 Board Meeting

Kent J. Bradford, Chair, asked the Board for corrections to the minutes from April 4, 2008. Elizabeth Goryunova requested the following correction:

1. Page 1, under subtitle: Board Members Present which reads:
Christine K. Gardner. Corrected to read: **“Christian”**

MOTION MADE BY JOHN W. THOMSON TO APPROVE THE MINUTES AS AMENDED.

MOTION SECONDED BY ELIZABETH GORYUNOVA .

MOTION CARRIED AND PASSED UNANIMOUSLY

II. RULES (No Items)

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION (Board Information Item)

a. 30-day Public Comment Period for the License of Cavanagh Services Group, Inc.

Mario Bettolo, Health Physicist, informed the Board about the recent license application by Cavanagh Services Group Inc. (CSG). Mr. Bettolo said that CSG had requested a license for a category 4-c. He said this category authorizes the receipt of prepackaged radioactive waste material from one entity and the disposal and transfer of that material by another authorized entity.

Mr. Bettolo said that R313-17-2 states that the Executive Secretary should give a 30-day public notice for proposed licensing actions. In accordance with this rule, a public notice will be published in the Salt Lake Tribune and in the Deseret Morning News on May 3, 2008 through June 2, 2008. In addition, the statement of basis and draft license is available for review on the DRC Web Site.

CSG is not licensed to generate, process, repack, incinerate, or facilitate the decay of radioactive material. In addition, the license will limit CSG to less than 1,664 cubic feet of radioactive material. CSG is also limited to no more than one curie of special nuclear material and two curies of source material. CSG is limited to two curies of all other radioactive material.

Mr. Bettolo asked the Board if they had any questions. There were no questions by the Board.

IV. X-RAY REGISTRATION/INSPECTION (Board Action Item)

a. Approval: Certification of Mammography Imaging Medical Physicist

Craig W. Jones, Section Manager, informed the Board on this item. Mr. Jones said that Utah Code gives the Board provision to make rules and to establish certification procedures and qualifications for people who survey mammography facilities. These individuals are referred to as Mammography Imaging Medical Physicists (MIMP). MIMPs evaluate mammography x-ray equipment and the imaging systems at mammography facilities. The Radiation Control Rules require MIMPs to be recertified each year.

The following seven physicists have submitted applications and have demonstrated that they are eligible to be recertified as MIMPs:

Lisa M. Bosworth, M.S.
James M. Botti, M.S.
Byron L. Hardy, Ph.D.
Robert J. Hoffman, M.S.

Peter A. Jenkins, M.S.
Ann M. Jones, M.S.
Ross L. Mercer, M.S.

RECOMMENDATION:

The Executive Secretary recommended that the Board approve each individual named above as a Mammography Imaging Medical Physicist. The effective date of the approval should be from June 1, 2008 to May 31, 2009.

Questions by the Board:

Stephen T. Nelson, Vice Chair, asked Craig Jones if the physicians had completed the 15 units of continuing education. Mr. Jones responded that all of the requirements, including the 15 continuing education units, had been met.

**MOTION MADE BY STEPHEN T. NELSON, VICE CHAIR, TO
APPROVE THE RECERTIFICATION OF THE SEVEN
INDIVIDUALS AS MAMMOGRAPHY IMAGING MEDICAL**

PHYSICISTS.

MOTION SECONDED BY ELIZABETH GORYUNOVA.

MOTION CARRIED AND PASSED UNANIMOUSLY

V. RADIOACTIVE WASTE DISPOSAL (Board Action Item)

a. Consideration of EnergySolutions' Motion to Conduct Limited Discovery

Fred Nelson, DEQ Attorney, addressed the Board. Fred Nelson asked the Board to recall the last Board meeting on April 4, 2008. At the meeting, Cedar Mountain Environmental Inc. (CME) issued a Notice of Further Proceedings to Appeal EnergySolutions' renewal of their license. What is before the Board today is a request by EnergySolutions to conduct Limited Discovery before they can respond--and before they make a determination as to whether they are going to oppose or whether they will accept the assertions of CME.

Fred Nelson, DEQ Attorney, explained the Civil Proceeding to the Board. Mr. Nelson said that this process is an exchange of information between the parties. He said this can be done in a number of ways. It can be done by requesting an exchange of documents; or it can be done by written questions; or it can be done by taking depositions or testimonies from the individuals involved.

Mr. Nelson suggested that the Board hear ten minutes from each party. He suggested that EnergySolutions address the Board first followed by Cedar Mountain Environmental Inc. (CME). After hearing from both of the parties the Board can make a decision as to whether or not they will grant Limited Discovery to EnergySolutions.

Kent J. Bradford, Chair, asked the representatives of EnergySolutions to address the Board.

Craig Galli, Attorney from Holland and Hart Representing EnergySolutions, addressed the Board. He said EnergySolutions would like to challenge the Standing of Mr. Judd's appeal. He said the declarations and the information submitted with Mr. Judd's petition are very vague. EnergySolutions really does not know what the factual basis is for Mr. Judd's allocations; therefore, it is premature for EnergySolutions to file a Motion to Dismiss based on Standing. In addition, it is appropriate for EnergySolutions to engage in Limited Discovery. This will involve one deposition of Mr. Judd and a written request for information.

Kent J. Bradford, Chair, asked Charles Judd from Cedar Mountain Environmental Inc. (CME), to address the Board.

Charles Judd, President of Cedar Mountain Environmental (CME), introduced himself. He said that legal council had advised him that he could file an appeal as both a citizen and as the President of Cedar Mountain Environmental Inc. He said he was filing his appeal as a concerned Utah citizen. He said he wanted to prove that harm had been done to the citizens of the State of Utah. In addition, he said he did not get a response to his questions from either the Division or the Board. He said that he had no option but to obtain a response to his questions through an Appeal.

Charles Judd asked that the Board not to allow EnergySolutions to do an intrusive Discovery at this time. He asked the Board to hear the Standing and move forward. He said Discovery works both ways, as mentioned by DEQ's attorney. He said that he expected the right to take Depositions of individuals from EnergySolutions and get documents from them. He said he would need to have five or six additional Depositions. He thanked the Board for their time, and said if they had any questions that he would be glad to answer them.

Questions by the Board:

Stephen T. Nelson, Vice Chair, asked Craig Galli, Counsel from EnergySolutions, what EnergySolutions hoped to learn through Discovery? He asked if he could give him some specifics.

Craig Galli, Holland and Hart, responded that Mr. Judd alleged that EnergySolutions had committed harm to business operations; harm to employees; and personal injury to employees. Mr. Galli said that Mr. Judd's allegations were speculative. He said one cannot assert vague and speculative harm in order to have Standing. Utah case law, case law in all 50 States, and in the Federal Courts have established that it is necessary and appropriate for a party that is subject to such a challenge have the right to use Limited Discovery.

Mr. Galli explained there has to be a "requisite establishment of Standing" to bring Mr. Judd's challenge. The process to establish Standing has been defined by the Utah Supreme Court and by the Federal Supreme Court. It determines jurisdiction for this Board. The Radiation Control Board does not have jurisdiction to hear Mr. Judd's arguments, until Mr. Judd, or anybody else who alleges harm, can bring some basis for demonstrating Standing.

Mr. Galli stated that he believed Mr. Judd was not bringing his appeal as a

citizen of Utah, but rather as a competitor. He said whether or not Mr. Judd's interest falls within a zone appropriate to establish Standing and to challenge a license based on his environmental concerns is absolutely a legitimate question.

Richard W. Sprott, DEQ Director, asked Fred Nelson to explain Limited Discovery to the Board.

Fred Nelson, DEQ Attorney, explained that if the Board granted Limited Discovery to *EnergySolutions* and if Mr. Judd disagreed with his providing the information, he could file a Motion and refuse to provide the information. At which point, it would come back to the Board—Similarly, for *EnergySolutions*. This is the format for Civil Procedures. There are Motions for Protective Order, there are Refusals to Answers, and there are various things there that are available to parties to make sure that abuse does not happen. What *EnergySolutions* is asking for, here today, is simply the opportunity to do Limited Discovery on the issue of Standing. If *EnergySolutions* is out of line in what they do, Mr. Judd has the right to come back to the Board and raise those issues.

Fred Nelson asked *EnergySolutions'* Attorneys how much time they needed to conduct Limited Discovery. Mr. Galli asked for 60 days.

Kent J. Bradford, Chair, clarified that the Board would be modifying the schedule that was adopted at the last Board meeting.

Fred Nelson, Attorney for DEQ, responded that the former schedule was for a response to be submitted by *EnergySolutions* by May 6, 2008. *EnergySolutions* is asking is for a 60-day extension to conduct Limited Discovery. After Limited Discovery, *EnergySolutions* would submit a response. CME would also have an opportunity to reply with a similar amount of time. Limited Discovery will require an adjustment to the schedule.

Fred Nelson, Attorney for DEQ, said *EnergySolutions* has made a motion for Discovery on the Standing Issues and not on the merits. If Mr. Judd wants to make a motion for Discovery on the merits, he would have to make a Motion.

Peter A. Jenkins asked how the appeal would affect *EnergySolutions'* license while it was being disputed? He asked if the new license conditions were in effect?

Fred Nelson, Attorney for DEQ, responded. He said the new license was in effect. He said there has not been a Motion to Stay the effect of the new license. *EnergySolutions* is currently operating under the new license. If

the challenge is successful against EnergySolutions' license, the license may eventually be changed or modified.

Kent J. Bradford, Chair, called for a vote on the Motion.

**MOTION MADE BY STEPHEN T. NELSON, PH.D., VICE CHAIR
TO GRANT ENERGYSOLUTIONS TO CONDUCT LIMITED
DISCOVERY FOR THE PERIOD OF 60 DAYS .**

MOTION SECONDED BY FRANK D. DeROSSO

MOTION CARRIED AND PASSED UNIAMOUSLY

Request by Charles Judd

Charles Judd, President of CME, addressed the Board. He asked the Board if he was required to make a written request for equal Discovery or if he could make an oral request for Discovery now.

Fred Nelson, DEQ Attorney, responded to Mr. Judd's question on behalf of the Board. He said that Mr. Judd would have to make a written Motion for Discovery. This would give the other party a chance to respond to Mr. Judd's Motion. Fred Nelson, Esq., told Mr. Judd that if he wanted to present his Motion at the next Board Meeting, he would need to file the Motion 10-days prior to the next Board Meeting. The next Board Meeting will be held on June 6, 2008.

VI. URANIUM MILL TAILINGS UPDATE (Board Information Item)

a. Presentation by Mancos Resources

Kent J. Bradford, Chair, informed the Board that Gregory Hunt from Mancos Resources would give a presentation.

Mr. Hunt gave the Board an outline of Mancos Resources presentation entitled "Commercial Uranium Mill Proposal of the Green River, Utah."

Questions by the Board:

Some of the Board Members had questions as to where the major water supply would be coming from; which highway the trucks would be using; and where the legal rights for the water access would come from.

Gregory Hunt responded to the Board's questions. He said that the Green River would be the major water source for the uranium mill. He said that Emery County Industrial Park would be providing the infrastructure. Emery County Industrial Park would provide the pipe lines for culinary water and raw water. The trucks would access the site from Highway 24

from the direction of Huntsville or I-70. We applied for water with the State, and we are in negotiations with someone that already has water rights. It is just a matter of getting legal access to water rights.

VII. OTHER DIVISION ISSUES (Board Action Item)

a. Election of Radiation Control Chairman and Vice Chairman for the period of July 1, 2008 thru June 30, 2009

Kent J. Bradford, Chair, reminded the Board that there were several of the Board Members' terms that would expire at the end of June. Chairman Bradford opened the floor for nominations for Chair and Vice Chair.

MOTION MADE BY ELIZABETH GORYUNOVA TO NOMINATE PETER A. JENKINS AS CHAIRMAN OF THE UTAH RADIATION CONTROL BOARD.

MOTION SECONDED BY CHRISTIAN K. GARDNER.

MOTION CARRIED AND PASSED UNANIMOUSLY

MOTION MADE BY STEPHEN T. NELSON TO NOMINATE ELIZABETH GORYUNOVA AS VICE CHAIR OF THE UTAH RADIATION CONTROL BOARD.

MOTION SECONDED BY JOSEPH K. MINER.

MOTION CARRIED AND PASSED UNANIMOUSLY

Dane L. Finerfrock, Executive Secretary, asked the Chair, Kent J. Bradford, if he could make some final comments. Kent J. Bradford invited Dane Finerfrock, Executive Secretary, to make final comments.

Dane L. Finerfrock, Executive Secretary, said Vice Chairman Steve has made it clear that he is not going to be around for the next Board meeting in June, 2008. He said he did not have to say this to Kent J. Bradford and Gregory G. Oman yet; however, he said it was his privilege to say "thank you" to Steve on behalf of the Board, the DEQ Staff and the Citizens of Utah. He said that Steve has been an invaluable Board Member throughout the past ten years. He said 10 years is a lot of experience and a lot of knowledge that we are losing. He said thank you, Steve Nelson, on behalf of everyone!

VIII. PUBLIC COMMENT

James O'Neal, Citizen from Provo, Utah, said he had couple of general

comments. He said he liked the direction the Board was going. The Board is getting a little more backbone, and you realize that these people have had to come to you with “their hat in their hand.” You have the power, and the public expects you to use it.

Relative to the future and new discoveries, there is an article in the current “*Scientific America*.” It is on page 88 regarding the recycling of nuclear material. This is an issue in Utah, and I recommend that you read it.

As far as issues surrounding the Green River, those of us that are opposed to nuclear material in Utah are not out of the loop. He said that citizens know what is going on, and he suggested that the Board Members do like the “little Dutch boy,” did in the Netherlands. He asked the Board Members to put their thumbs in the dike and keep it in there, until we can come up with a fix. He said thank you very much.

IX. OTHER ISSUES

Next Scheduled Board Meeting: June 6, 2008, DEQ Bldg 2, Conference Room 101, 168 North 1950 West, Salt Lake City, Utah, 2:00 - 4:00 P.M.

THE BOARD MEETING ADJOURNED AT 3:25 P.M.